

**AMENDMENT TO H.R. 4173
(FINANCIAL REGULATORY REFORM)**

**OFFERED BY MR. SMITH OF TEXAS AND ~~MRS. CAPITO OF WEST~~
VIRGINIA**

*Mrs. Capito of West Virginia and Mr. Smith
of Texas*

[Page and line nos. refer to Conference base text]

Strike title II and insert the following:

TITLE II--BANKRUPTCY INTEGRITY AND ACCOUNTABILITY ACT

SEC. 201. SHORT TITLE.

This title may be cited as the "Bankruptcy Integrity and Accountability Act of 2010".

SEC. 202. AMENDMENTS TO TITLE 28 OF THE UNITED STATES CODE.

Title 28, United States Code, is amended--

(1) in section 1408, by striking "section 1410" and inserting "sections 1409A and 1410";

(2) by inserting after section 1409 the following:

"§1409A. Venue of cases involving non-bank financial institutions

"A case under chapter 14 may be commenced in the district court of the United States for the district--

"(1) in which the debtor has its domicile, principal place of business in the United States, principal assets in the United States, or in which there is pending a case under title 11 concerning the debtor's affiliate or subsidiary, if a Federal Reserve Bank is located in that district;

"(2) if venue does not exist under paragraph (1), in which there is a Federal Reserve Bank and in a Federal Reserve district in which the debtor has its domicile, principal place of business in the United States, principal assets in the United States, or in

which there is pending a case under title 11 concerning the debtor's affiliate or subsidiary;
or

“(3) if venue does not exist under paragraph (1) or (2), in which there is a Federal Reserve Bank and in a Federal circuit adjacent to the Federal circuit in which the debtor has its domicile, principal place of business or principal assets in the United States.”, and

(3) by amending the table of sections for chapter 87, by inserting after the item relating to section 1408 the following:

“1409A. Venue of cases involving non-bank financial institutions.”.

SEC. 203. AMENDMENTS TO TITLE 11 OF THE UNITED STATES CODE.

(a) *Definitions.*--Section 101 of title 11, United States Code, is amended--

(1) by inserting after paragraph (26) the following:

“(26A) The term ‘functional regulator’ means the Federal regulatory agency with the primary Federal regulatory authority over the debtor, such as an agency listed in section 509 of the Gramm-Leach-Bliley Act.”;

(2) by redesignating paragraphs (38A) and (38B) as paragraphs (38B) and (38C), respectively;

(3) by inserting after paragraph (38) the following:

“(38A) the term ‘Financial Stability Oversight Council’ means the entity established in section 111 of the Restoring American Financial Stability Act of 2010”;
and

(4) by inserting after paragraph (40) the following:

“(40A) The term ‘non-bank financial institution’ means an institution the business of which is primarily engaged in financial activities that is not an insured depository institution.”.

(b) *Applicability of Chapters.*--Section 103 of title 11, United States Code, is amended--

(1) in subsection (a) by striking “13” and inserting “13, and 14”;

(2) by redesignating subsection (k) as subsection (l); and

(3) by inserting after subsection (j) the following:

`(k) Chapter 14 applies only in a case under such chapter."

(c) *Who May Be a Debtor*.--Section 109 of title 11, United States Code, is amended--

(1) in subsection (b)--

(A) in paragraph (2), by striking ``or" at the end;

(B) in paragraph (3), by striking the period at the end and inserting ``; or";
and

(C) by adding at the end the following:

``(4) a non-bank financial institution that has not been a debtor under chapter 14 of this title."; and

(2) in subsection (d), by striking ``or commodity broker" and inserting ``, commodity broker, or a non-bank financial institution".

(d) *Involuntary Cases*.--Section 303 of title 11, the United States Code, is amended--

(1) in subsection (a) by striking ``or 11" and inserting ``, 11, or 14"; and

(2) in subsection (b) by striking ``or 11" and inserting ``, 11, or 14".

(e) *Obtaining Credit*.--Section 364 of title 11, United States Code, is amended by adding at the end the following:

``(g) Notwithstanding any other provision of this section, the trustee may not, and the court may not authorize the trustee to, obtain credit, if the source of that credit either directly or indirectly is the United States. Nor shall any Federal funds be made available through the Federal Reserve System, including through the authority of the third undesignated paragraph of section 13 of the Federal Reserve Act (12 U.S.C. 343)."

(f) *Chapter 14*.--Title 11, United States Code, is amended--

(1) by inserting the following after chapter 13:

``CHAPTER 14--ADJUSTMENT TO THE DEBTS OF A NON-BANK FINANCIAL INSTITUTION

``1401..Inapplicability of other sections.

``1402..Applicability of chapter 11 to cases under this chapter.

``1403..Prepetition consultation.

``1404..Appointment of trustee.

``1405..Right to be heard.

``1406..Right to communicate.

``1407..Exemption with respect to certain contracts or agreements.

``1408..Conversion or dismissal.``

§1401. Inapplicability of other sections

``Except as provided in section 1407, sections 362(b)(6), 362(b)(7), 362(b)(17), 546(e), 546(f), 546(g), 555, 556, 559, 560, and 561 do not apply in a case under this chapter. ``

§1402. Applicability of chapter 11 to cases under this chapter

``With the exception of sections 1104(d), 1109, 1112(a), 1115, and 1116, subchapters I, II, and III of chapter 11 apply in a case under this chapter. ``

§1403. Prepetition consultation

``(a) Subject to subsection (b)--

``(1) a non-bank financial institution may not be a debtor under this chapter unless that institution has, at least 10 days prior to the date of the filing of the petition by such institution, taken part in the consultation described in subsection (c); and

``(2) a creditor may not commence an involuntary case under this chapter unless, at least 10 days prior to the date of the filing of the petition by such creditor, the creditor notifies the non-bank financial institution, the functional regulator, and the Financial Stability Oversight Council of its intent to file a petition and requests a consultation as described in subsection (c).

``(b) If the non-bank financial institution, the functional regulator, and the Financial Stability Oversight Council, in consultation with any agency charged with administering a nonbankruptcy insolvency regime for any component of the debtor, certify that the immediate filing of a petition under section 301 or 303 is necessary, or that an immediate filing would be in the interests of justice, a petition may be filed notwithstanding subsection (a).

``(c) The non-bank financial institution, the functional regulator, the Financial Stability Oversight Council, and any agency charged with administering a nonbankruptcy insolvency regime for any component of the debtor shall engage in prepetition consultation in order to

attempt to avoid the need for the non-bank financial institution's liquidation or reorganization in bankruptcy, to make any liquidation or reorganization of the non-bank financial institution under this title more orderly, or to aid in the nonbankruptcy resolution of any of the non-bank financial institution's components under its nonbankruptcy insolvency regime. Such consultation shall specifically include the attempt to negotiate forbearance of claims between the non-bank financial institution and its creditors if such forbearance would likely help to avoid the commencement of a case under this title, would make any liquidation or reorganization under this title more orderly, or would aid in the nonbankruptcy resolution of any of the non-bank financial institution's components under its nonbankruptcy insolvency regime. Additionally, the consultation shall consider whether, if a petition is filed under section 301 or 303, the debtor should file a motion for an exemption authorized by section 1407.

“(d) The court may allow the consultation process to continue for 30 days after the petition, upon motion by the debtor or a creditor. Any post-petition consultation proceedings authorized should be facilitated by the court's mediation services, under seal, and exclude ex parte communications.

“(e) The Financial Stability Oversight Council and the functional regulator shall publish and transmit to Congress a report documenting the course of any consultation. Such report shall be published and transmitted to Congress within 30 days of the conclusion of the consultation.

“(f) Nothing in this section shall be interpreted to set aside any of the limitations on the use of Federal funds set forth in the Bankruptcy Integrity and Accountability Act of 2010 or the amendments made by such Act. Nor shall any Federal funds be made available through the Federal Reserve System, including through the authority of the third undesignated paragraph of section 13 of the Federal Reserve Act (12 U.S.C. 343).”

§1404. Appointment of trustee

“In applying section 1104 to a case under this chapter, if the court orders the appointment of a trustee or an examiner, if the trustee or an examiner dies or resigns during the case or is removed under section 324, or if a trustee fails to qualify under section 322, the functional regulator, in consultation with the Financial Stability Oversight Council, shall submit a list of five disinterested persons that are qualified and willing to serve as trustees in the case and the United States trustee shall appoint, subject to the court's approval, one of such persons to serve as trustee in the case.”

§1405. Right to be heard

“(a) The functional regulator, the Financial Stability Oversight Council, the Federal Reserve, the Department of the Treasury, the Securities and Exchange Commission, and any domestic or foreign agency charged with administering a nonbankruptcy insolvency regime for any component of the debtor may raise and may appear and be heard on any issue in a case under this chapter, but may not appeal from any judgment, order, or decree entered in the case.

“(b) A party in interest, including the debtor, the trustee, a creditors' committee, an equity security holders' committee, a creditor, an equity security holder, or any indenture trustee may raise, and may appear and be heard on, any issue in a case under this chapter.”

§1406. Right to communicate

“The court is entitled to communicate directly with, or to request information or assistance directly from, the functional regulator, the Financial Stability Oversight Council, the Board of Governors of the Federal Reserve System, the Department of the Treasury, or any agency charged with administering a nonbankruptcy insolvency regime for any component of the debtor, subject to the rights of a party in interest to notice and participation.”

§1407. Exemption with respect to certain contracts or agreements

“(a) Subject to subsection (b)--

“(1) upon motion of the debtor, consented to by the Financial Stability Oversight Council--

“(A) the debtor and the estate shall be exempt from the operation of sections 362(b)(6), 362(b)(7), 362(b)(17), 546(e), 546(f), 546(g), 555, 556, 559, 560, and 561;

“(B) if the Financial Stability Oversight Council consents to the filing of such motion by the debtor, the Board shall inform the court of its reasons for consenting; and

“(C) the debtor may limit its motion, or the board may limit its consent, to exempt the debtor and the estate from the operation of section 362(b)(6), 362(b)(7), 362(b)(17), 546(e), 546(f), 546(g), 555, 556, 559, 560, or 561, or any combination thereof; and

“(2) if the Financial Stability Oversight Council does not consent to the filing of a motion by the debtor under paragraph (1), the debtor may file a motion to exempt the debtor and the estate from the operation of sections 362(b)(6), 362(b)(7), 362(b)(17), 546(e), 546(f), 546(g), 555, 556, 559, 560, and 561, or any combination thereof.

“(b) The court shall commence a hearing on a motion under subsection (a) not later than 5 days after the filing of the motion to determine whether to maintain, terminate, annul, modify, or condition the exemption under subsection (a)(1) or, in the case of a motion under subsection (a)(2), grant the exemption. The court shall request the filing of briefs by the functional regulator and the Financial Stability Oversight Council. The court shall decide the motion not later than 5 days after commencing such hearing unless--

“(1) the parties in interest consent to an extension for a specific period of time; or

“(2) except with respect to an exemption from the operation of section 559, the court sua sponte extends for 5 additional days the period for decision if such extension would be in the interests of justice or is required by compelling circumstances.

“(c) The court shall maintain, terminate, annul, modify, or condition the exemption under subsection (a)(1), or, in the case of a motion under subsection (a)(2), grant the exemption only upon showing of good cause. In determining whether good cause has been shown, the court shall balance the interests of both debtor and creditors while attempting to preserve the debtor's assets for repayment and reorganization of the debtor's obligations, or to provide for a more orderly liquidation.

“(d) For purposes of timing under section 562 of this title, if a motion is filed under subsection (a)(1) or if a motion is granted under subsection (a)(2), the date or dates of liquidation, termination, or acceleration shall be measured from the earlier of--

“(1) the actual date or dates of liquidation, termination, or acceleration; or

“(2) the date on which a forward contract merchant, stockbroker, financial institution, securities clearing agency, repo participant, financial participant, master netting agreement participant, or swap participant files a notice with the court that it would have liquidated, terminated, or accelerated a contract or agreement covered by section 562 of this title had a stay under this section not been in place.

“(e) The provisions of this section shall apply only with respect to contracts and agreements covered by this section entered into on or after the date of enactment of this chapter.”

§1408. Conversion or dismissal

“In applying section 1112 to a case under this chapter, the debtor may convert a case under this chapter to a case under chapter 7 of this title if the debtor may be a debtor under such chapter unless the debtor is not a debtor in possession.”, and

(2) by amending the table of chapters of such title by adding at the end the following:

“14. Adjustment to the Debts of a Non-Bank Financial Institution 1401”.

